IN THE HIGH COURT OF JUDICATURE AT BOMBAY
OOCJ.
Chamber Summons No. 1799 of 2004
in
Suit NO. 734 of 2004

THE NEW INDIA ASSURANCE
CO.LTD. ... Plaintiffs
vs.
UNITED COMMERCIAL
BANK AND ORS ... defendants
AND
CHANDU PAATIAANI AND ANR. ... Respondents

Mr. P. G. Lad for Plaintiffs -applicants.
Mr. Sanjay Kolate with A.A. Joshi i/b.
Mulla & Mulla for Respondents.

CORAM: **ROSHAN DALVI J.**
Date: 20/12/2005

P.C.

The Plaintiffs seek to amend the plaint. Amendment is two fold. One amendment relates to adding Respondents 1 and 2 as defendants 4 and 5. Those parties have been served by registered post A.D. In June 2005. They have failed to claim the registered packet. The affidavit of service is filed. The second part of the amendment relates to additional averments sought to be made against defendants 2 and 3 as well as the other defendants who are sought to be made party defendants.

They relate to the allegation of collusion between these parties.

The Plaintiffs have alleged forgery, fraud, wrongful loss, interpolation, gross negligence, lack of minimal care lack of diligence, wrongful collusion etc., in the plaint against defendant nos. 2 and 3. The Plaintiffs desire to join the other defendants with whom defendant nos. 2 and 3 are stated to have colluded and to make additional averments. In view of the fact that mala fides are alleged as can be seen from a scanning of the plaint and only the averments relating to collusion are skipped in the plaint, interest of justice demands that the Plaintiffs be allowed to amend the plaint to make those additions.

It is argued on behalf of defendant no. 2 that the cause of action relating to collusion is time barred since collusion is alleged to have taken place in March 2001 which fact was mentioned in the Plaintiffs' advocate's notice dated 20.6.2001. It will be open to the defendants to aver those additional grounds of bar of limitation in their additional written statement. In the circumstances

the following order is passed.

Chamber Summons is made absolute in terms of prayer (a). The Plaintiffs shall carry out amendment within 2 weeks as also in the copy of the plaint served upon the defendants 2 and 3 within 3 weeks. The Plaintiffs shall serve the writ of summons upon the newly added defendants, consequent upon the amendment. Defendant nos. 2 and 3 shall be entitled to file additional written statement within 4 weeks after the amendments are carried out in their copy of the plaint.

Chamber Summons disposed of accordingly. No order as to costs.

(ROSHAN DALVI J.)